

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298**FILED**

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R1407002

February 9, 2023

**Agenda ID #21349**  
**Ratesetting**

TO PARTIES OF RECORD IN RULEMAKING 14-07-002, et al.:

This is the proposed decision of Administrative Law Judge Valerie U. Kao. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's March 16, 2023 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ MICHELLE COOKE

Michelle Cooke

Acting Chief Administrative Law Judge

MLC:jnf

Attachment

Decision **PROPOSED DECISION OF ALJ KAO** (Mailed 2/9/2023)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to  
Develop a Successor to Existing Net  
Energy Metering Tariffs Pursuant to  
Public Utilities Code Section 2827.1,  
and to Address Other Issues Related  
to Net Energy Metering.

Rulemaking 14-07-002

And Related Matter.

Application 16-07-015

**DECISION MODIFYING INCENTIVES AND ELIMINATING INCENTIVE  
STEP-DOWN METHODOLOGY FOR THE SOLAR ON MULTIFAMILY  
AFFORDABLE HOUSING PROGRAM**

**Summary**

This decision partially grants a petition for modification of Decision 17-12-022 regarding the Solar on Multifamily Affordable Housing (SOMAH) program. The decision increases current incentive levels and eliminates the annual step-down in incentives established in Decision 17-12-022. The decision denies the petition's request to enable the Solar on Multifamily Affordable Housing Program Administrator to propose future changes to incentive levels via Advice Letter. The decision defers addressing the request for a differentiated incentive for properties in disadvantaged communities, leaving this element to be considered in a forthcoming ruling.

This proceeding remains open to consider potential further modifications to the SOMAH and Disadvantaged Communities – Single-family Affordable Solar Homes programs.

## **1. Background**

Pursuant to Assembly Bill (AB) 693 (Stats. 2015, Chap. 582), the California Public Utilities Commission (Commission) in Decision (D.) 17-12-022 established the Solar on Multifamily Affordable Housing (SOMAH) program, which provides financial incentives for installation of solar energy systems on multifamily Affordable housing properties.<sup>1</sup> As part of program implementation details, D.17-12-022 establishes per-watt incentives and specifies that incentive levels must annually decrease either by five percent or by the annual percent decline in residential solar costs as reflected by National Renewable Energy Laboratory reports, whichever is less.

On August 11, 2022, the Center for Sustainable Energy (CSE) filed a petition to modify D.17-12-022 with respect to the requirement to annually adjust incentive levels. The petition further requests to increase current incentive levels and to differentiate incentive levels depending on type of eligibility. Acknowledging that existing projects may also benefit from a higher incentive levels, the petition proposes that any projects that have already submitted a SOMAH application but have not yet submitted their Proof of Project Milestone documentation may request the updated incentive level.<sup>2</sup> The petition states that

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<sup>1</sup> While AB 693 and Public Utilities (Pub. Util.) Code Section 748.5 use the name “Multifamily Affordable Housing Solar Roofs Program,” D.17-12-022 determined that the program implementing the statute would be named the SOMAH, program.

<sup>2</sup> “Proof of Project Milestone” is when the applicant must submit copies of their executed contract, ownership agreement, and performance requirements for third-party owned systems (if applicable). This step occurs before the “Incentive Claim Milestone.” After the system is

*Footnote continued on next page.*

existing applications are at risk of cancellation “due to increasing project costs and degrading project financials,” noting that average project costs have increased from \$3.77 per watt for projects submitted in 2019 to \$4.21 per watt for projects submitted in 2021, while inflation has increased from 4.2 percent in April 2021 to 9.1 percent in June 2022.<sup>3</sup> CSE’s petition states that between January and August 2022, 22 applications cancelled, citing financial challenges.<sup>4</sup> For context, the current SOMAH incentive levels are:

Tax Credits		\$ per AC Watt Incentive	
Investment Tax Credit (ITC)	Low-Income Housing Tax Credit (LIHTC)	Tenant	Common Area
No	No	\$2.97	\$1.02
Yes	No	\$2.09	\$0.74
No	Yes	\$2.09	\$0.74
Yes	Yes	\$1.49	\$0.56

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purchased, installed, and interconnected, then the applicant reaches the “Incentive Claim Milestone” and submits their signed incentive claim form, job training affidavit, final VNEM Load Allocation form, tenant education affidavit, and documentation of load increase (if applicable). See Section 4.2.4 of SOMAH Program Handbook (Fifth Edition), uniform resource locator (url): [https://calsomah.org/sites/default/files/docs/SOMAH-Handbook\\_FifthEdition.pdf](https://calsomah.org/sites/default/files/docs/SOMAH-Handbook_FifthEdition.pdf)

<sup>3</sup> *Petition of Center for Sustainable Energy® for Modification of Decision 17-12-022 to Address the Methodology for Calculating an Annual Step-down in Incentives for the Solar on Multifamily Affordable Housing Program*, filed August 11, 2022 (Petition), at 10.

<sup>4</sup> Petition, at 12.

Finally, the petition requests authorization for the SOMAH Program Administrator to propose future adjustments to incentive levels via Advice Letter.

The petition identifies several reasons for the requested modifications, including that program participation has essentially stalled after initial demand was satisfied. The petition also references the 2021 SOMAH program evaluation, which concludes that SOMAH is not a market transformation program, suggesting that incentive step-downs may not be appropriate.<sup>5,6</sup> In support of this notion, the petition points to the Multifamily Affordable Solar Housing (MASH) and Low-Income Weatherization Program for Multifamily Properties (LIWP), neither of which employ(ed) an incentive step-down process.

Sunrun Inc. (Sunrun), Southern California Edison Company (SCE), and California Solar & Storage Association (CALSSA) filed timely responses to the petition.

CALSSA and Sunrun support the petition. CALSSA acknowledges the proposed incentive levels require adjustment to account for passage of the federal Inflation Reduction Act, which sets the solar Investment Tax Credit at 30 percent, has additional tax incentive bonuses based on location or multifamily affordability qualifications, and allows non-profit organizations that do not pay federal income tax to receive an equivalent cash refund, and further allows

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<sup>5</sup> SOMAH Phase II CALMAC ID CPU0330.02.

<sup>6</sup> SOMAH Phase II Evaluation described the SOMAH program as-thus “**SOMAH is not a Market Transformation program.** Incentive step-downs are typically used for market transformation programs that strive to increase demand for a technology and consequently drive down costs for that technology and therefore the incentives required. The affordable housing properties that the SOMAH Program was developed to serve are reliant on program incentives to install solar, and there is no reason to believe that the need for incentives is going to change over the life of the program or after the program has ended”(page 93).

taxpaying entities without sufficient tax liability to sell the tax credit. CALSSA also recommends a simpler incentive structure than the petition, recommending no distinction between properties located in disadvantaged communities and properties outside of disadvantaged communities because, CALSSA asserts, project costs depend more on materials, labor, financing and transactional costs than on whether a property is located in a disadvantaged community. CALSSA and Sunrun request one further revision, which is that any application for which the final incentive claim form has not been filed should receive the updated incentives without the need for the developer to withdraw its reservation and restart the application.

SCE recommends denying the petition, suggesting it is premature. SCE advocates to instead address the issues presented in the petition, along with the findings of the 2020-2021 SOMAH evaluation reports, in a workshop to consider program changes to ensure the SOMAH program achieves its goals.<sup>7</sup> SCE also requests the Commission to develop criteria or guidance for determining if there is “adequate interest and participation in the program” to continue funding or whether to “credit uncommitted funds back to ratepayers pursuant to Section 748.5.”

CSE timely filed a reply to responses.<sup>8</sup> CSE disagrees both with SCE’s recommendation for a more holistic review of the 2020-2021 SOMAH program evaluation findings and with SCE’s suggestion that further guidance is needed

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<sup>7</sup> SOMAH Evaluation Phase I CALMAC ID CPU0330.01; SOMAH Phase II CALMAC ID CPU0330.02; and SOMAH Vendor Assessment CALMAC ID CPU0330.05.

<sup>8</sup> CSE timely requested and obtained permission to file a reply to responses to its petition. *See Reply of Center for Sustainable Energy® to Responses for Petition for Modification of D.17-12-022 to Address the Methodology for Calculating an Annual Step-down in Incentives for the Solar on Multifamily Affordable Housing Program*, filed September 22, 2022, at 1.

for determining “adequate participation and interest” in the program, noting the Commission has already reached such finding in D.20-04-012. CSE’s reply states it is amenable to CALSSA’s and Sunrun’s proposed revision to allow any project that has already submitted a SOMAH application but has not yet submitted its Incentive Claim Milestone documentation to request the revised incentive level, unless it has already received more than one extension beyond its original 18-month reservation due date, urging that projects with existing applications move forward at the current incentive rates where economically feasible. CSE does not support CALSSA’s revision to the petition’s proposed incentive levels, asserting the higher incentives for projects located in disadvantaged communities is warranted and necessary to achieve the SOMAH Program Administrator’s target of 40 percent of capacity installed in disadvantaged communities.<sup>9</sup>

## **2. Standard of Review**

Rule 16.4 of the Commission’s Rules of Practice and Procedure (Rules) governs petitions for modification. Rule 16.4 derives its authority from Public Utilities Code Section 1708 that allows the Commission to rescind, alter, or amend any decision made by it.

In addressing the petition, we consider whether CSE met its substantial burden, pursuant to Rule 16.4(b), to demonstrate that the Commission should exercise its discretion to modify D.17-12-022.<sup>10</sup> We also consider whether the

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<sup>9</sup> Advice Letter 133-E/133-E-A, disposed on April 27, 2022, proposed a voluntary benchmark of 40 percent of capacity installed in disadvantaged communities.

<sup>10</sup> Rules of Practice and Procedure, Rule 16.4; *See also* PG&E Corp. v. Public Utilities Com. (2004) 118 Cal.App.4th 1174, 1215 [California Pub. Util. Code Section 1708, which authorizes the Commission to “rescind, alter, or amend any order or decision made by it,” is permissive]. *See also* 2017 Cal. PUC LEXIS 514, at 7; 1998 Cal. PUC LEXIS 658, at 2: The Commission’s

*Footnote continued on next page.*

petition justifies its late submission in accordance with Rule 16.4(d).

The petition offers justification for the requested relief, which we address in the following sections. The petition explains that the circumstances giving rise to the specific relief sought only occurred beginning in October 2021, with the completion of the final Phase II Report of the 2020 SOMAH program evaluation, and therefore the petition could not have been filed within one year after the effective date of D.17-12-022. Although the petition does not propose specific wording to carry out all requested modifications to D.17-12-022 as required by Rule 16.4(d), the specific requests are more accurately considered as program modifications, and – noting additionally that D.17-12-022 provides that the Commission would periodically evaluate incentive levels and may adjust them based on relevant market factors -- the Commission exercises its discretion to consider whether to grant the requested relief.<sup>11</sup>

### **3. Increased Incentive Levels in Light of Stalled Participation and Recent Project Cost Data**

This decision modifies SOMAH incentive levels as recommended by the petition, but without distinguishing whether a project is located in a disadvantaged community, as follows:

Tax Credits		\$ per AC Watt Incentive	
ITC	LIHTC	Tenant	Common Area
No	No	\$3.50	\$1.19
Yes	No	\$2.45	\$0.87

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exercise of authority under Pub. Util. Code Section 1708 is an “‘extraordinary remedy’ that must be ‘sparingly and carefully applied.’”

<sup>11</sup> D.17-12-022 Appendix B, at 2.



Tax Credits		\$ per AC Watt Incentive	
ITC	LIHTC	Tenant	Common Area
No	Yes	\$2.45	\$0.87
Yes	Yes	\$1.75	\$0.65

The revised incentives adopted by this decision are greater than those established by D.17-12-022, in recognition that program participation appears to have stalled, and further that reported project costs have increased. CSE addressed a significant drop-off in new applications, noting that in 2019 there were 319 new applications, in 2020 there were 183 new applications, in 2021 there were 150 new applications, and from January to June 2022 there were 7 new applications.<sup>12</sup> In the face of increasing inflation, increasing project costs, and decreasing program applications, we find it reasonable to increase the SOMAH program's incentive levels. We particularly note that the program is approximately one-fifth of the way towards its overall megawatt (MW) goals (63.5 MW reserved/installed out of 300 MW as of December 31, 2022). In contrast, the program has more than 70 percent of its incentive funds remaining. Given this information it is apparent that we must re-stimulate participation in order to achieve the program goals.<sup>13</sup>

This decision also permits existing projects and their corresponding property owners to request the applicable incentive level adopted by this decision, as specified in CALSSA's response. That is, a project that has already submitted a SOMAH application (i.e., prior to the issue date of this decision) but

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<sup>12</sup> Petition, at 9 'Figure 1 SOMAH Application Submissions since Program Opening'.

<sup>13</sup> SOMAH Semi-Annual Progress Report January 2023, available at: <https://www.cpuc.ca.gov/somah#ProgramSAR>

has not yet submitted its Incentive Claim Milestone documentation may request the revised incentive level. This approach is reasonable in terms of minimizing administrative expense of both the SOMAH Program Administrator and project applicants. However, we seek to ensure that this program change – which we make to ensure the success of the program in meeting its goals – will not result in unnecessary financial windfalls for developers. For this reason, we will add a safeguard to avoid projects receiving additional incentives unnecessarily. We share CSE’s concern that current applications can have cancellation risk from changes in project costs or economic viability, but after the Proof of Project Milestone this risk decreases, especially for third party-owned systems as the final agreements between the solar developer and property owner are in place (following completion of this milestone). The intent of the increased incentives is to improve the economic viability of currently planned projects and thereby enable properties and their tenants to remain in the pipeline. To that end, while the revised incentive is available to current applicants, the request must come from the property owner. We direct the SOMAH Program Administrator to develop a process with a clear request form, in consultation with Energy Division staff, to verify this outcome without undue delay to application processing. Options to consider may include requiring re-submittals of copies of revised executed contracts or ownership agreements (after the Proof of Project Milestone but before the Incentive Claim Milestone) and/or developing a notification and confirmation process for property owners. Details of this new process will be a part of the SOMAH program handbook update that the SOMAH Program Administrator will submit pursuant to this decision.

The SOMAH Program Administrator must track and report on its efforts in future Semi-Annual Progress Report(s) until the transition of applications to

the updated incentive levels adopted in this decision is complete. These directives are consistent with D.17-12-022, which tasked the SOMAH Program Administrator with safeguarding program funds and protecting the overall integrity of the program.<sup>14</sup>

The SOMAH Program Administrator must submit a Tier 2 Advice Letter to implement the revised incentive levels and verification process adopted in this decision, and further to reflect the extension of income tax credits and other incentives provided by the Inflation Reduction Act.

While we are increasing the incentive for all projects at this time, we defer a decision on the petition's proposed higher incentive level for projects located in disadvantaged communities. We agree with the petition's intent to increase support for DAC participants and benefits for DACs, and we intend to consider the proposed higher incentive for DACs in conjunction with a broader set of programmatic changes to determine how best to achieve this objective. A forthcoming ruling will invite comments on various program improvements, including but not limited to storage, contractor support, financing, program requirements and program administration. The reasonableness of setting higher incentive levels for projects located in disadvantaged communities is best considered in the context of broader changes that collectively could better address barriers to greater participation in DACs. As part of the forthcoming ruling, we will seek further data on the necessity of increased incentives for DACs, as well as other information; our overall policy preference is to increase uptake in DACs in the most effective manner that most directly benefits the communities themselves.

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<sup>14</sup> See D.17-12-022, Appendix B at 4.

#### **4. Elimination of the Annual Step-Down in Incentives**

It is reasonable to eliminate the annual incentive step-down methodology adopted in D.17-12-022. D.17-12-022 adopted the annual step-down methodology in response to the legislature's direction that we ensure "incentive levels...are aligned with the installation costs for solar energy systems in affordable housing markets."<sup>15</sup> While D.17-12-022 found this methodology reasonable, and this decision does not disturb that finding, incorporating such a methodology was not required to comply with the legislature's direction. Further, the petition correctly notes that the data source for determining the percentage change in project costs – the National Renewable Energy Laboratory's quarterly "U.S. Photovoltaic Prices and Cost Breakdowns" Technical Report – is based on small-scale, single-family home installations; parties do not appear to dispute that these types of projects, and their associated costs, are not comparable to SOMAH projects. No party has identified an alternative data source, other than reported SOMAH project cost data, that accurately reflects the population that SOMAH is intended to serve, *i.e.*, multifamily affordable housing. Moreover, reported project costs are not necessarily reflective of the general multifamily market but rather of the cost of SOMAH program participation. We also acknowledge, as the petition details, that the MASH program did not include an incentive step-down process; and the LIWP, administered by the California Department of Community Services and Development, has maintained the same solar photovoltaic incentive levels since early 2018 and, in 2020, reinstated round

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<sup>15</sup> Pub. Util. Code Section 2870(f)(4): "The commission shall ensure that incentive levels for photovoltaic installations receiving incentives through the program are aligned with the installation costs for solar energy systems in affordable housing markets and take account of federal investment tax credits and contributions from other sources to the extent feasible."

1 incentive levels for properties serving formerly unhoused populations. For all these reasons, it is reasonable to eliminate the incentive step-down process to achieve the program's goals.

**5. The Petition's Request for Authorization to Propose Future Incentive Level Changes via Advice Letter is Denied**

As discussed in Section 3 of this decision, the Commission intends to consider broader revisions to the SOMAH program, which may more effectively address participation than revising incentive levels alone. Further, the various factors on which the petition proposes to base future modifications would require more than a ministerial determination, which is generally not appropriate for disposition via Advice Letter. Separate but relatedly, the proposed program participation and total project cost criteria raise a concern that they may incentivize less scrupulous project developers either to refrain from submitting projects or to inflate their reported project costs, in an effort to prompt the Program Administrator to propose higher incentives. We do not find the example of D.13-08-004, permitting the California Solar Initiative Thermal program administrators to reduce project incentive amounts via a Tier 2 Advice Letter, to be reasonably comparable to the instant situation: whereas D.13-08-004 permitted a one-time modification to the total incentive amount, here the petition requests the ability to modify incentive levels an unlimited number of times, which may unnecessarily raise uncertainty and thereby negatively impact participation.<sup>16</sup>

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<sup>16</sup> D.13-08-004 declined to impose a total incentive cap, at 50 percent of total project costs, but permitted the program administrators to request to reduce the incentive amount via Advice Letter "if it is determined that solar pool heating system incentives are too high" D.13-08-004, at 18.

**6. Comments on Proposed Decision**

The proposed decision of Administrative Law Judge (ALJ) Valerie U. Kao in this matter was mailed to the parties in accordance with Section 311 of the Pub. Util. Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.

**7. Assignment of Proceeding**

John Reynolds is the assigned Commissioner and Valerie U. Kao is the assigned ALJ in this proceeding.

**Findings of Fact**

1. Participation in the SOMAH program appears to have stalled after initial demand was satisfied, and reported project costs appear to have increased.
2. The federal Inflation Reduction Act extends the Income Tax Credit and provides other tax incentives applicable to SOMAH projects.
3. An incentive step-down is not required to comply with statutory direction for the SOMAH program.
4. The National Renewable Energy Laboratory's quarterly "U.S. Photovoltaic Prices and Cost Breakdowns" Technical Report is based on small-scale, single-family home installations, which are distinct from solar installations for multifamily affordable housing.
5. The MASH program did not include an incentive step-down process.
6. The petition's proposed factors for future modifications to SOMAH incentives, via advice letter, would require more than a ministerial determination.

7. The Commission intends to consider broader changes to the SOMAH program based on the 2020-2021 SOMAH program evaluation reports.

### **Conclusions of Law**

1. It is reasonable to modify SOMAH incentive levels to account for stalled participation and recent data on project costs.

2. The revised incentive levels should be available to current applicants that have not yet submitted their Incentive Claim Milestone documentation; any such request for the revised incentive levels should come from the property owner.

3. It is reasonable to eliminate the incentive step-down methodology from the SOMAH program.

4. It is reasonable to deny the petition in all other respects, in favor of considering broader changes aimed at achieving the SOMAH program goals.

### **O R D E R**

#### **IT IS ORDERED** that:

1. Within 30 days after the issue date of this decision, the Solar on Multifamily Affordable Housing Program Administrator must submit a Tier 2 Advice Letter to revise the Solar on Multifamily Affordable Housing program implementation plan and handbook to implement the revised incentive levels and request form for property owners of currently planned projects, and further to reflect the extension of income tax credits and other incentives provided by the federal Inflation Reduction Act; and to eliminate the incentive step-down methodology.

2. Except as provided by Ordering Paragraph 1, the August 11, 2022 *Petition of Center for Sustainable Energy for Modification of Decision 17-12-022 to Address the Methodology for Calculating an Annual Step-Down in Incentives for the Solar on Multifamily Affordable Housing Program* is denied.

3. Consolidated Rulemaking 14-07-002 and Application 16-07-015 remain open for consideration of potential further changes to the Solar on Multifamily Affordable Housing and Disadvantaged Communities – Single-family Affordable Solar Homes programs.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.